IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1708 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

STATE OF GUJARAT

Versus

ROOPSING LALSING

Appearance:

1. Special Civil Application No. 1708 of 2000

MR DIGANT P. JOSHI AGP for Petitioner No. 1

MR RC PATHAK for Respondent No. 1 (Absent)

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 06/12/2001

ORAL JUDGEMENT

1. Heard the learned Assistant Government Pleader Mr.D.P.Joshi. None present for the respondent even as the matter was listed for final hearing since 4.12.2001 and called out several times.

2. By this petition under Articles 226 and 227 of the Constitution, the order of the Labour Court, Ahmedabad dated 29.5.1999 passed in Recovery Application

No.2219 of 1987 is challenged mainly on the grounds that the impugned order was passed without affording proper opportunity of being heard and was ex facie illegal and without jurisdiction.

3. It appears from the impugned order that after filing of the written statement by the petitioner, the hearing of the recovery application was adjourned for several times at the behest of the petitioner and, in fact, the petitioner had failed to avail the opportunities which were afforded to him. However, having regard to the claims made by the respondent, the petition is required to be entertained and the impugned order is required to be interfered with.

4. The claim of the respondent before the Labour Court was that he had suffered monetary loss because of not being promoted and several specific amounts were claimed on account of the supposed delay in promoting him as `workcharge' and the delay in promoting him as a mukadam from `workcharge' labourer. In absence of any response from the petitioner, except filing of the written statement, the Labour Court accepted the claims and awarded the amounts as prayed on the basis of the finding that competent labourers were to be promoted and the petitioner had failed to prove the incompetency of the respondent.

5. It is well-settled that under the provisions of Section 33-C of the Industrial Disputes Act, 1947 (`the Act' for short), the Labour Court can order recovery of monies due to a workman where the basis of the right of a workman is pre-existing and does not require to be adjudicated. Thus, a limited jurisdiction is conferred upon the Labour Court in the matter of recovery of dues whereas in the facts of the present case, the Labour Court went on to examine the supposed right of the respondent for promotion and that too within a specific time and further went on to award difference of salary which he would have been entitled had he been promoted. Therefore, obviously, the impugned order is without jurisdiction and beyond the competence of the Labour Court in the proceedings under Section 33-C of the Act.

6. In these facts and circumstances, the impugned order is required to be set aside. Accordingly, the petition is allowed. The impugned order dated 29.5.1999 passed in Recovery Application No.2219 of 1987 is set aside. Rule is made absolute with no order as to costs.

7. Before parting with this judgment, it is

necessary to advert to the callous disregard shown by the petitioner in conducting the case before the Labour Court as well as before this Court insofar as no care was taken to represent the case properly before the Labour Court and no care was also taken to present a properly drafted petition before this Court. These remarks are made in the hope that some corrective and remedial measures shall be taken by the petitioner, having regard to the costs to the public exchequer and burden of litigation on the judicial system.

Sd/-

06.12.2001 (D.H.Waghela, J.)

(KMG Thilake)